

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
ABOUBACAR JALLOH,

Plaintiff,

-against-

THOMAS P. WENDEL,

Defendant.

Index No.: 07 Civ. 4091 (NRB)

ECF CASE

**AFFIDAVIT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Hon. Judge Naomi R. Buchwald

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

MARK A. SOLOMON, being duly sworn, deposes and states:

1. I am an attorney duly admitted to practice before this Court. I am an attorney with the LAW OFFICES OF HARVEY & VANDAMME, attorneys for defendant THOMAS P. WENDEL (hereinafter "Mr. Wendel") in the above captioned matter. I am familiar with the pleadings and proceedings in this matter, and I make this affidavit in support of Mr. Wendel's motion for an Order pursuant to FRCP 56 and N.Y. Insurance Law 5102 granting summary judgment in his favor dismissing the complaint and any and all claims asserted against him, together with such other relief as the Court may deem just and proper.

2. This is an action for personal injuries allegedly sustained by plaintiff in a motor vehicle accident on August 7, 2006.

3. Plaintiff alleges *inter alia* that as a result of the subject motor vehicle accident, he sustained "serious injuries" as defined in N.Y. Insurance Law 5102.

4. Plaintiff commenced this action by filing a summons and complaint on or about March 21, 2007. Issue was joined by service of an answer on or about May 21, 2007. (See **Exhibit "A"**, Pleadings, annexed hereto).

5. Discovery proceeded thereafter, the depositions of plaintiff and Mr. Wendel held on February 8, 2008. Plaintiff's deposition transcript is annexed hereto and made a part hereof as **Exhibit "B"**. A copy of the Police Accident Report for the subject accident is annexed hereto and made a part hereof as **Exhibit "C"**. Plaintiff was examined by his treating physician, Dina Nelson, M.D. on November 2, 2006; a copy of Dr. Nelson's report dated November 2, 2006 is annexed hereto and made a part hereof as **Exhibit "D"**. Plaintiff was examined by Mr. Wendel's designated physician, Robert S. April, M.D. on April 2, 2008; a copy of defendant's FRCP 26(a)(2) dated April 8, 2008 which contains Dr. April's subscribed and affirmed report dated April 2, 2008 is annexed hereto and made a part hereof as **Exhibit "E"**.

DEPOSITION OF PLAINTIFF ABOUBACAR JALLOH

6. Plaintiff testified that when the accident occurred, his head moved toward the steering wheel and then back to his seat (Exhibit "B," p. 29). Following the accident, a police officer asked plaintiff if he wanted an ambulance, and plaintiff replied "no." (Exhibit "B," p. 32-33). Plaintiff first sought medical attention the next day (Exhibit "B," p. 40). Plaintiff was treated with hot pads, a needle, Tylenol and a prescription (Exhibit "B," p. 42). His only physical limitations are kneeling, and walking straight (Exhibit "B," p. 47).

POLICE ACCIDENT REPORT

6. The Police Accident Report reports no injuries arising from the subject motor vehicle accident (Exhibit "C").

MEDICAL RECORD OF PLAINTIFF'S TREATING
DOCTOR DINA NELSON, M.D.

8. Plaintiff saw Dina Nelson, M.D. on November 2, 2006, less than ninety days immediately following the subject motor vehicle accident. Dr. Nelson noted at that time that plaintiff was "feeling improved with less neck pain and less low back pain. He tolerates sitting. He is working eight hours a day as a taxi driver."

PHYSICAL EXAMINATION OF PLAINTIFF BY ROBERT S. APRIL, M.D.

9. Dr. April's physical examination of plaintiff revealed no objective signs of neurological or neuromuscular dysfunction. Plaintiff was found to have full and equal strength in the muscles of upper and lower limbs, no atrophy, normal reflexes, and no problems with his stance or his gait.

10. The undisputed evidentiary record establishes that plaintiff did not sustain a "serious injury" as defined in N.Y. Insurance Law 5201 as a result of the subject motor vehicle accident. Thus upon the foregoing and upon the applicable law recited in the accompanying Memorandum of Law, Mr. Wendel cannot be liable for plaintiff's accident. Mr. Wendel has established that he is entitled to summary judgment in his favor as a matter of law.

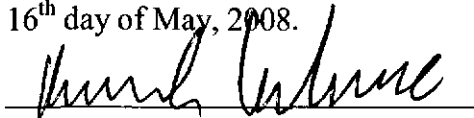
WHEREFORE, it is respectfully requested that the Court issue an Order pursuant to FRCP 56 and N.Y. Insurance Law 5102 granting summary judgment in his favor dismissing the complaint and any and all claims asserted against him, together with such other relief as the Court may deem just and proper.

Dated: New York, New York
May 16, 2008



MARK A. SOLOMON (2613)

Sworn to before me this
16th day of May, 2008.



Notary Public

HENDRICK VANDAMME
NOTARY PUBLIC-STATE OF NEW YORK
No. 02VA6155083
Qualified in New York County
My Commission Expires 11/2/2010

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**NOTICE OF MOTION FOR SUMMARY JUDGMENT
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LAW OFFICES OF HARVEY & VANDAMME

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